IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NICHOLAS MARADIAGA, and RAFAEL MARTINEZ,	§	
	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. **3:10-CV-1028-L**
	§	
INTERMODEL BRIDGE TRANSPORT, INC., and COSCO LOGISTICS (AMERICAS), INC.,	§	
	§	
	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

On June 18, 2010, Defendant Cosco Logistics (Americas), Inc. ("COSCO") filed a motion

to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The motion included

matters outside the pleadings. Plaintiffs did not file a response to the motion to dismiss but instead

filed Plaintiffs' First Amended Original Complaint on June 25, 2010. COSCO filed a reply and

requests the court to treat its motion as one for summary judgment pursuant to Rule 56 of the

Federal Rules of Civil Procedure and to grant its motion because there is no competent evidence

from Plaintiffs that COSCO is a joint employer with Defendant Intermodel Bridge Transport, Inc.

Under Rule 12(d) of the Federal Rules of Civil Procedure, the court may either exclude

matters presented outside the pleadings, or it may treat the motion as one for summary judgment

pursuant to Rule 56. If the court treats the motion as one for summary judgment, "[a]ll parties must

be given a reasonable opportunity to present all the material that is pertinent to the [converted]

motion." *Id.* The court elects to treat COSCO's 12(b)(6) motion as one for summary judgment and

therefore must give Plaintiffs an opportunity to respond to it. *Id.*; *Murphy v. Inexco Oil Co.*, 611 F.2d 570, 573 (5th Cir. 1980).

Accordingly, Plaintiffs shall file a response to the motion for summary judgment by **December 17, 2010**, and COSCO may file a reply to the response by **December 27, 2010**. As the court has converted COSCO's motion into one for summary judgment, the response and reply, insofar as evidentiary submissions, must comply with the requirements of Rule 56.

It is so ordered this 2nd day of December, 2010.
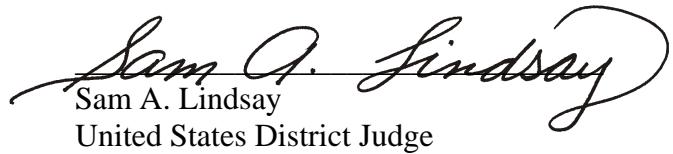
Sam A. Lindsay
United States District Judge